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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002635

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TAGS: PGOV PHUM PREL HK CH PINR MC

SUBJECT: UPDATE ON COVERT SURVEILLANCE AND WIRETAPPING

LEGISLATION: BILLS COMMITTEE FINISHES SCRUTINY

REF: A. A) HONG KONG 2493
 1B. B) HONG KONG 0465
 1C. C) HONG KONG 0523

Classified By: E/P Chief Simon Schuchat. REASONS: 1.4(b,d).

11. (C) Summary: The Bills Committee on the Interception of Communications and Covert Surveillance (BC) finished scrutinizing the legislation on June 22 -- only 10 days after Secretary for Security Ambrose Lee criticized the Committee

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for its slow progress (see ref a). Pro-democracy members of the BC complained that the bill was being rushed through and worried that it had not been properly vetted. They also expressed concern over provisions in the bill empowering the Government to destroy potentially exculpatory evidence obtained through wiretaps. The BC is now considering amendments to the bill -- a process set to be completed by June 30. The pro-democracy Civic Party is seeking 11 specific amendments that it says will ensure its support. The Government has yet to outline its amendments. A vote on the bill could come as soon as July 12, and passage remains all but certain. End Summary.

Miraculous Progress

12. (SBU) After being criticized on June 12 by Secretary for Security Ambrose Lee for its slow progress (see ref a), the Bills Committee on the Interception of Communications and Covert Surveillance (BC) finished scrutinizing the Government's bill on June 22. While it took more than three months to scrutinize the first 12 clauses of the 65-clause bill, the final 53 clauses were finished in just over one week. The progress was due largely to the addition of 50 hours of meetings to the committee's schedule following Lee's remarks.

13. (C) Pro-democracy members of the BC complained that the rushed pace and marathon meetings had left the bill improperly vetted. Civic Party member Ronnie Tong said "part of the strategy is to impose what I regard to be totally unreasonable working hours." He explained that most pro-government members of the committee were indifferent to the length of the meetings since they often left immediately following the quorum call. Democratic Party member James To complained that the BC worked its way through 10 clauses during his two-hour absence from one eight-hour Saturday session. To is the BC's most outspoken member on how the new law could undermine the rights and freedoms guaranteed in the Basic Law. Pro-democracy member Emily Lau called the vetting process "unhealthy." As might be expected, pro-government

members of Legco were as outspoken in their complaints about pan-democratic "nitpicking," singling out To as obstructionist. It seems clear that no one in Legco is happy about the pressure they feel to complete work on the bill before the court-imposed August 9 deadline.

¶4. (SBU) Pro-democracy members of the committee also expressed concern over the Government's power to destroy exculpatory evidence obtained through wiretaps. The bill provides that products of covert surveillance, such as evidence from hidden cameras and tracking devices, are admissible in court, but the products of wiretaps are not. According to the bill, evidence obtained by wiretaps must be destroyed as soon as possible, unless it contains exculpatory evidence. However, Civic Party member Margaret Ng said that the bill relied too much on the "conscience of prosecutors" to determine what was exculpatory. The issue was thrown into the spotlight after it was revealed that crucial evidence in the Independent Commission Against Corruption (ICAC) case -- the 2005 case which led to the overturning of the existing wiretapping law -- was destroyed, despite a letter from one of the defendants seeking its preservation. Permanent Secretary for Security Stanley Ying responded by noting that

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the purpose of intercepting communications was intelligence gathering and investigation and that "once that purpose is served, the product will be destroyed." He added that all such material would be destroyed prior to trial to ensure fairness.

What Next?

¶5. (C) The BC is now considering amendments to the bill -- a process set to be completed by June 30. The Civic Party is seeking 11 specific amendments that it says will ensure its support for the bill. These amendments are centered on the

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following four goals: 1) Broaden the scope of crimes for which judicial authorization is required to conduct covert surveillance or wiretapping; 2) Safeguard attorney-client communications from surveillance; 3) Impose criminal sanctions, as opposed to administrative punishments, for violations of the law by Government officials; 4) Redefine "serious crimes," which would have a lower threshold for surveillance authorization, to be those involving prison terms of seven years rather than three years (see ref b). The Government has indicated to us in the past that it may be willing to amend the bill to protect the attorney-client privilege, but the extent to which it is willing to address the other concerns remains unclear. On June 23, Solicitor General Bob Allcock told us that Department of Justice legislative drafters were already hard at work preparing amendments in response to the BC's concerns.

¶6. (SBU) A vote on the bill could come as soon as July 12, media reports said. While the Government would dearly like to gain the support of the pan-democrats, it has made clear that it will seek a vote before the August 9 court-imposed deadline (see ref c), and passage remains all but certain. Cunningham